# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## SOUTH ZONAL BENCH
## CHENNAI

**Appeal No.C/169/2009**

[Arising out of Order-in-Appeal No.42/2009 dt. 24.3.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli]

Kaks and Bills Pvt. Ltd. — Appellant

Versus

Commissioner of Customs, Tuticorin — Respondent

Appearance:

Shri Piyushkumar, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

**CORAM :**

**Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Date of hearing / decision : 15.09.2017

**FINAL ORDER No.** 42082/2017

**Per B. Ravichandran**

The appeal is against order dt. 24.3.2009 of Commissioner (Appeals), Trichy.

2. The ld. counsel for the appellant submitted that the Commissioner (Appeals) dismissed their appeal for non-compliance of predeposit in terms of Section 129E of Customs Act, 1962. The

Customs, Excise & Service Tax Appellate Tribunal first appellate authority ordered for predeposit of Rs.32 lakhs which is more than 50% of the adjudicated duty demand against the appellant.

3. Ld. counsel submitted that the dispute involved in the present case is regarding applicability of anti-dumping duty during the period when there was provisional anti-dumping duty with a reference value which was later enhanced in the final notification for anti-dumping duty. The enhanced reference value as per final notification did not bring any liability to the appellant for the imported items. During the period of exist~~ing~~ance of provisional anti-dumping duty out of 14 consignments imported, they paid anti-dumping duty in respect of two consignments. Anti-dumping duty was not collected for remaining 12 consignments as the reference value of import was higher than the reference value as per the provisional anti-dumping duty notification.

4. After the issue of final anti-dumping duty notification dt. 24.7.2007, the Revenue entertained a view that anti-dumping duty based on final notification is liable to be paid by the appellant in respect of all consignments imported by them during the operation of provisional anti-dumping duty notification. Accordingly, the original authority confirmed a duty demand of Rs.63,52,202/-. The appellant filed appeal before the Commissioner (Appeals) who vide the impugned order dismissed the same for failure to predeposit an amount of Rs.32 lakhs as ordered by him. We note on appeal before

the Tribunal, the appeal was admitted with full waiver of predeposit vide Misc. Order No.41284/2013 dt. 30.4.2013.

5. We have heard both sides and perused the appeal records. Admittedly, there is no order on the merits of the case by the first appellate authority. The appeal stands dismissed by him on the question of predeposit itself. We direct the first appellate authority to hear the appeal without insisting on any predeposit in view of the finding recorded by this Tribunal in the Misc. Order No.41284/2013 dt. 30.4.2013. We note that Ld. counsel referred to the decision of the Hon'ble Supreme Court in *CC Bangalore Vs G.M. Exports* - 2015 (324) ELT 209 (SC) and the applicability of Rule 21 of Anti-dumping Rules,1995. We direct the Commissioner (Appeals) to examine all the aspects afresh including the applicability of the Apex Court order relied on by the appellant as well as provisions of Rule 21 of Anti-Dumping Rules1995. Adequate opportunity shall be provided to the appellant before a fresh decision is taken. Since the issue is pending for almost 10 years, it will be advisable for the Commissioner (Appeals) to decide the case at the earliest, in any case, not later than 2 months. Appeal is allowed by way of remand.

(dictated and pronounced in court)

(B. Ravichandran) 15917
**Member (Technical)**

(Sulekha Beevi C.S)
**Member (Judicial)**

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Customs, Excise & Service Tax Appellate Tribunal

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